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Attorneys for Plaintiffs
HANK AZARIA and HOW TO PICTURES, INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HANK AZARIA, an individual, and
HOW TO PICTURES, INC., a
California corporation,

Case No. 12-cv-09732-GAF-RZx

Plaintiffs,

V.₁

CRAIG BIERKO, an individual,

Defendant.

**DECLARATION OF MICHAEL J.
PLONSKER IN SUPPORT OF
PLAINTIFFS' OPPOSITION TO
DEFENDANT'S MOTION TO SET
ASIDE ENTRY OF DEFAULT**

DECLARATION OF MICHAEL J. PLONSKER

1 I, Michael J. Plonsker, declare:

2 1. I am an attorney duly licensed to practice before all of the courts of the
3 State of California. I am a partner at the law firm of Robins, Kaplan, Miller &
4 Ciresi, L.L.P., attorneys of record for Plaintiffs Hank Azaria and How To Pictures,
5 Inc. (“Plaintiffs.”) I know the following facts to be true of my own personal
6 knowledge, and if sworn as a witness I would competently testify to them.

7 2. Plaintiffs have been engaging in settlement discussions regarding the
8 matter at issue in this case with Craig Jacobson (“Jacobson”), counsel for
9 Defendant Craig Bierko (“Bierko”), since at least early 2011. These negotiations
10 took place before the filing of this action on November 14, 2012, and continued
11 until December 17, 2012, i.e., past the deadline that Bierko had for filing a response
12 to the complaint on December 12, 2012.

13 3. Attached hereto as Exhibit A is a true and correct copy of an email I
14 sent to Jacobson on December 14, 2012, which attached a proposed execution copy
15 of a Settlement Agreement and a Short Form (the attachments are not included as
16 an exhibit).

17 4. Attached hereto as Exhibit B is a true and correct copy of an email
18 chain between Jacobson and I, beginning on December 15, 2012, and ending on
19 December 17, 2012, concerning the proposed settlement agreement. We have
20 redacted this correspondence because it reveals portions of the settlement
21 agreement.

22 5. Attached hereto as Exhibit C is a true and correct copy of an email I
23 received from Bierko that he sent to the Court on December 17, 2012.

24 6. Attached hereto as Exhibit D is a true and correct copy of an email that
25 I sent to Jacobson on December 17, 2012.

26 7. Attached hereto as Exhibit E is a true and correct copy of two emails I
27 received from Jacobson on December 18, 2012.

8. Attached hereto as Exhibit F is a true and correct copy of emails exchanged between Jacobson and I on December 21, 2012, in which I inform him that Bierko was attempting to speak to me directly and in which Jacobson gives me permission to contact Bierko directly.

9. Attached hereto as Exhibit G is a true and correct copy of an email sent to my colleague Rex Glensy by Bierko on December 21, 2012.

10. Attached hereto as Exhibit H is a true and correct copy of my response to Bierko's email referenced in the paragraph above sent on December 26, 2012.

11. Attached hereto as Exhibit I is a true and correct copy of the OSC issued by the Court on January 10, 2013.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

Executed this 11 day of February, 2013, in Los Angeles, California.

Michael J. Plonsker

EXHIBIT A

From: Plonsker, Michael J.
Sent: Friday, December 14, 2012 10:41 AM
To: Salehi, Mahdi; Jacobson, Craig
Cc: Glensy, Rex D.
Subject: Azaria v. Bierko
Attachments: Azaria - Settlement Agreement.pdf

Attached is the execution copy of the Settlement Agreement and the Short form. Please have Craig Bierko sign them. I will have Hank do the same.

We would like to get this done today. Please let me know when you have the signed copy. Emailed signatures, followed by the original, is fine.

Thank you.

Michael J. Plonsker, Esq.
ROBINS, KAPLAN, MILLER & CIRESI L.L.P.
Co-chair
Entertainment & Media Department
2049 Century Park East, Suite 3400
Los Angeles, California 90067-3208
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Facsimile: (310) 229-5800
E-mail: mjplonsker@rkmc.com
<http://rkmc.com/Michael-Plonsker.htm>

EXHIBIT B

From: Plonsker, Michael J.
Sent: Monday, December 17, 2012 10:32 AM
To: Jacobson, Craig
Cc: Salehi, Mahdi; Glensy, Rex D.
Subject: RE: craig b.

Please let me know what your client intends to do. If the Settlement Agreement and Short Form are not signed today, we will seek to have default entered against him.

Please call me if you want to discuss this.

Best regards,

-----Original Message-----

From: Plonsker, Michael J.
Sent: Saturday, December 15, 2012 9:05 AM
To: Jacobson, Craig
Cc: Salehi, Mahdi
Subject: Re: craig b.

Craig

That is not acceptable to us for the reasons that I have explained.

REDACTED

Thanks

Michael J. Plonsker
310-229-5821
mjplonsker@rkmc.com

Sent from my iPhone

On Dec 15, 2012, at 8:51 AM, "Jacobson, Craig" <cj@hith.com> wrote:

> Would prefer that the settlement agmt also have language and we can get this signed.

REDACTED

pls just put in that

>

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EXHIBIT C

From: Craig <mrcraigbierko@gmail.com>
Sent: Monday, December 17, 2012 4:49 PM
To: fmo_chambers@cacd.uscourts.gov
Cc: Plonsker, Michael J.
Subject: Extension

Ms. Ramirez,

My name is Craig Bierko and I am currently being sued by Hank Azaria (case # CV12 9732).

I was served in New York City (where I reside) on November 14th, 2012 and have spent the last twenty-one days negotiating a settlement, and today is the deadline for my first answer.

Unfortunately I find the terms of the settlement unfair. I have, on a number of occasions, asked Mr. Azaria's council for an extension of at least thirty to forty days so that I can find an attorney in Southern California, offer them a reasonable amount of time to become familiar with the facts of this case and, if necessary, plan my travel and budget expenses.

Every request has been denied outright by Mr. Azaria's council, leaving me no choice but to ask His Honor directly for this extension.

Thank you for this consideration.

Sincerely,
Craig Bierko

EXHIBIT D

From: Plonsker, Michael J.
Sent: Monday, December 17, 2012 6:22 PM
To: Jacobson, Craig
Cc: Glensy, Rex D.
Subject: Azaria/Bierko

Craig

Hank is willing to sign a Short Form. Please let me know if Craig is willing to agree to sign the Settlement Agreement as a result.

Craig has already had an extension of time to respond (a response was due last week). And, you have already told me that Craig does not have any intention of responding to the complaint.

So, let's get this done tomorrow. If not, we will seek to have a default entered on Wednesday.

Thank you.

Michael J. Plonsker, Esq.
ROBINS, KAPLAN, MILLER & CIRESI L.L.P.
Co-chair
Entertainment & Media Department
2049 Century Park East, Suite 3400
Los Angeles, California 90067-3208
Telephone: (310) 229-5821
Facsimile: (310) 229-5800
E-mail: mjplonsker@rkmc.com
<http://rkmc.com/Michael-Plonsker.htm>

EXHIBIT E

From: Jacobson, Craig <cj@hjth.com>
Sent: Tuesday, December 18, 2012 8:10 PM
To: Plonsker, Michael J.
Cc: Glensy, Rex D.
Subject: Re: Azaria/Bierko

Radio silence over here. I have asked

On Dec 18, 2012, at 3:47 PM, "Plonsker, Michael J." <MJPlonsker@rkmc.com> wrote:

Please let me know what he wants to do.

We will be filing a request for entry of default tomorrow if this is not resolved today.

Thanks.

From: Jacobson, Craig [<mailto:cj@hjth.com>]
Sent: Monday, December 17, 2012 6:35 PM
To: Plonsker, Michael J.
Subject: RE: Azaria/Bierko

Trying, I have asked.

From: Plonsker, Michael J. [<mailto:MJPlonsker@rkmc.com>]
Sent: Monday, December 17, 2012 6:22 PM
To: Jacobson, Craig
Cc: Glensy, Rex D.
Subject: Azaria/Bierko

Craig

Hank is willing to sign a Short Form. Please let me know if Craig is willing to agree to sign the Settlement Agreement as a result.

Craig has already had an extension of time to respond (a response was due last week). And, you have already told me that Craig does not have any intention of responding to the complaint.

So, let's get this done tomorrow. If not, we will seek to have a default entered on Wednesday.

Thank you.

Michael J. Plonsker, Esq.
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Telephone: (310) 229-5821
Facsimile: (310) 229-5800
E-mail: mjplonsker@rkmc.com

EXHIBIT F

From: Jacobson, Craig <cj@hjth.com>
Sent: Friday, December 21, 2012 3:34 PM
To: Plonsker, Michael J.
Cc: Glensy, Rex D.
Subject: Re: Message

I'm fine for him to talk to you

On Dec 21, 2012, at 6:25 PM, "Plonsker, Michael J." <MJPlonsker@rkmc.com> wrote:

Craig

Craig Bierko left a message with my office in Minnesota requesting that I call him.

Since he is represented by you, I obviously cannot do so.

Please tell him not to contact me directly. If he would like to communicate something to me, he needs to do it through you.

Thank you.

Michael J. Plonsker, Esq.
ROBINS, KAPLAN, MILLER & CIRESI L.L.P.
Co-chair
Entertainment & Media Department
2049 Century Park East, Suite 3400
Los Angeles, California 90067-3208
Telephone: (310) 229-5821
Facsimile: (310) 229-5800
E-mail: mjplonsker@rkmc.com
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Thank you in advance for your cooperation.

Robins, Kaplan, Miller & Ciresi L.L.P.
<http://www.rkmc.com>

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EXHIBIT G

From: Craig Bierko <mrcraigbierko@gmail.com>
Sent: Friday, December 21, 2012 4:43 PM
To: Glensy, Rex D.
Subject: case # 2:12-cv-09732-GAF-RZ

Dear Mr. Glensy,

After learning online of your request to default regarding case # 2:12-cv-09732-GAF-RZ I immediately called your office to request you set aside the motion to allow me at least thirty days to organize my defense.

As you know, the request for reasonable time has been made on several occasions through my attorney Craig Jacobson, each of which you denied outright without explanation.

If it is your decision to once again deny this extension I will need to know as soon as possible so that I may file my own motion to set aside your entry of default.

As I have not yet received direct notification of your request to default please E-mail confirmation of your attempt to notify either myself or my attorney Craig Jacobson on the day you filed at MrCraigBierko@gmail.com at your earliest convenience.

Thank you,
Craig Bierko

Craig Bierko
mrcraigbierko@gmail.com

EXHIBIT H

From: Plonsker, Michael J.
Sent: Wednesday, December 26, 2012 1:06 PM
To: Craig Bierko
Cc: Jacobson, Craig; Glensy, Rex D.
Subject: Azaria et. al. v. Bierko

Mr. Bierko

This is in response to your December 21, 2012 email. While Craig Jacobson has given me his approval to deal with you directly, I am nevertheless copying him with this email. I do not intend to get into a debate with you. We will set forth our positions and understanding of the facts and, if you choose to take any action in Court, please have Mr. Jacobson or another attorney contact me.

As to your request to "set aside the motion" pertaining to our request to enter default, default against you was already entered by the clerk on December 20, 2012. We believe that the default was properly entered and will not agree to set it aside.

As to your request that you be given an additional "thirty days to organize [your] defense," the facts are as follows. As you are aware, Mr. Azaria has been trying to settle this matter with you at least as far back as early 2011. We engaged in good faith in settlement discussions with Mr. Jacobson back then, but you refused any settlement offers. Mr. Azaria then tried to settle this matter with you via Mr. Jacobson again earlier this year, but you similarly refused all entreaties. Thus, Mr. Azaria was left with no choice but to file this lawsuit against you and did so on November 14, 2012. You were served with the Complaint on November 21, 2012, and thus have known about it for a month. Since November 21, 2012, we again engaged in discussions with your Mr. Jacobson in an attempt to settle this matter amicably. At first, we were advised that you did not want to enter into a settlement agreement and that we should just enter your default; then at our request, you agreed to consider entering into a settlement agreement; then you refused to do so unless Mr. Azaria agreed to sign a short form assignment; and then, when Mr. Azaria agreed to sign a short form assignment, you started to communicate with the Court and refused to settle.

You have known for some time that Mr. Azaria intends to use the Azaria Voice and Brockmeier Character in a film. You have known for some time that your meritless claim is causing damage in connection with Mr. Azaria's ability to do so. Nevertheless, you are seeking to create delay at every turn. You knew that a response to the Complaint was due to be filed on December 12th. You failed to do so and we did not immediately seek to have a default entered because we were communicating with Mr. Jacobson to attempt to resolve this lawsuit without the necessity of spending additional wasted time and money. But you choose not to either enter into the settlement agreement or to respond to the Complaint.

After the Complaint was filed and served, we repeatedly told Mr. Jacobson that should meaningful settlement discussions not proceed, we would request that default be entered against you. We extended the time for you to file a response by a week in the hope that a successful resolution could be obtained, but were rebuffed by you. Mr. Jacobson never requested that an extension be given beyond the couple days that we necessary to try to negotiate the terms of the settlement agreement.

In sum, you have known the nature of this matter for years, you have been represented by an attorney during all that time, you were aware of this lawsuit at least since November 21, 2012, you were warned repeatedly that default would be requested, and your time to respond was extended by a week. We will tolerate no further delays.

Therefore, Mr. Azaria intends to proceed full speed with this lawsuit.

Michael J. Plonsker, Esq.
ROBINS, KAPLAN, MILLER & CIRESI L.L.P.
Co-chair

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Facsimile: (310) 229-5800
E-mail: mjplonsker@rkmc.com
<http://rkmc.com/Michael-Plonsker.htm>

From: Craig Bierko [mailto:mrcraigbierko@gmail.com]
Sent: Friday, December 21, 2012 4:39 PM
To: Plonsker, Michael J.
Subject: Case # 2:12-cv-09732-GAF-RZ

Dear Mr. Plonsker,

After learning online of your request to default regarding case # 2:12-cv-09732-GAF-RZ I immediately called your office to request you set aside the motion to allow me at least thirty days to organize my defense.

As you know, the request for reasonable time has been made on several occasions through my attorney Craig Jacobson, each of which you denied outright without explanation.

If it is your decision to once again deny this extension I will need to know as soon as possible so that I may file my own motion to set aside your entry of default.

As I have not yet received direct notification of your request to default please E-mail confirmation of your attempt to notify either myself or my attorney Craig Jacobson on the day you filed at MrCraigBierko@gmail.com at your earliest convenience.

Thank you,
Craig Bierko

Craig Bierko
mrcraigbierko@gmail.com

EXHIBIT I

From: cacd_ecfmail@cacd.uscourts.gov
Sent: Thursday, January 10, 2013 1:03 PM
To: ecfnef@cacd.uscourts.gov
Subject: Activity in Case 2:12-cv-09732-GAF-RZ Hank Azaria v. Craig Bierko et al Text Only Scheduling Notice

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

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UNITED STATES DISTRICT COURT for the CENTRAL DISTRICT OF CALIFORNIA

Notice of Electronic Filing

The following transaction was entered on 1/10/2013 at 1:02 PM PST and filed on 1/10/2013

Case Name: Hank Azaria v. Craig Bierko et al

Case Number: 2:12-cv-09732-GAF-RZ

Filer:

Document Number: 16(No document attached)

Docket Text:

ORDER TO SHOW CAUSE: Plaintiff(s) are ORDERED to show cause why this case should not be dismissed, for lack of prosecution. Link v. Wabash R. Co., 370 U.S. 626 (1962) (court has inherent power to dismiss for lack of prosecution on its own motion). In this matter: Plaintiff(s) obtained entry of default, pursuant to Fed. R. Civ. P. 55(a), but Plaintiff(s) have not sought default judgment, pursuant to Fed. R. Civ. P. 55(b). Plaintiff(s) can satisfy this order by seeking default judgment or by notifying the Court that default judgment will not be sought, at which point the clerk will close this matter. Plaintiffs must respond to this order within 20 days. Failure to respond to this OSC will be deemed consent to the dismissal of the action. IT IS SO ORDERED.THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY.(rfi) TEXT ONLY ENTRY

2:12-cv-09732-GAF-RZ Notice has been electronically mailed to:

Michael J Plonsker mjplonsker@rkmc.com, lmmejia@rkmc.com, lsudar@rkmc.com

Rex Daniel Glensy rdglensy@rkmc.com

2:12-cv-09732-GAF-RZ Notice has been delivered by First Class U. S. Mail or by other means BY THE FILER to :